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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,366	12/22/2000	Stephen Charles Appling	1555-0020	2463
29052	7590	12/23/2005		
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			EXAMINER BONSHOCK, DENNIS G	
			ART UNIT	PAPER NUMBER
			2173	
DATE MAILED: 12/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/747,366

Applicant(s)

APPLING, STEPHEN CHARLES

Examiner

Dennis G. Bonshock

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-11, 13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, 13, and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Non-Final Rejection

Response to Amendment

1. It is hereby acknowledged that the following papers have been received and placed on record in the file: Amendment as received on 10-03-2005.

2. Claims 1-21 have been examined.

Status of Claims:

3. Claims 1-5, 7-11, 13, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidingsfeld et al., patent #6,823,359, hereinafter Heidingsfeld and Meyer, patent # 6,157,943.

4. Claims 6, 12, and 14, have been canceled by the applicant.

5. Claim 15, has been withdrawn by the applicant.

37 C.F.R. § 1.131

The declaration filed on 10-03-2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Heidingsfeld et al. reference.

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Heidingsfeld et al. reference to either a constructive reduction to practice or an actual reduction to practice. The declaration under 37 C.F.R. § 1.131 did not show detailed proof of diligence as is required under MPEP 715.07(a) which states:

Where conception occurs prior to the date of the reference, but reduction to practice is afterward, it is not enough merely to allege that applicant or patent owner had been diligent. *Ex parte Hunter*, 1889 C.D. 218, 49 O.G. 733 (Comm'r Pat. 1889). Rather,

applicant must show evidence of facts establishing diligence.

In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. *Ex parte Kantor*, 177 USPQ 455 (Bd. App. 1958).

What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6th Cir. 1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970). Diligence must be judged on the basis of the particular facts in each case. See MPEP § 2138.06 for a detailed discussion of the diligence requirement for proving prior invention.

Under 37 CFR 1.131, the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with the date of a reduction to practice, either actual or constructive (i.e., filing a United States patent application). Note, therefore, that only diligence before reduction to practice is a material consideration. The "lapse of time between the completion or reduction to practice of an invention and the filing of an application thereon" is not relevant to an affidavit or declaration under 37 CFR 1.131. See *Ex parte Merz*, 75 USPQ 296 (Bd. App. 1947). Form paragraph 7.62 (reproduced in MPEP § 715) may be used to respond to a 37 CFR 1.131 affidavit where diligence is lacking.

Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 7-11, 13, and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidingsfeld et al., patent #6,823,359, hereinafter Heidingsfeld and Meyer, patent # 6,157,943.

8. With regard to claim 1, Heidingsfeld teaches a method for updating data within a web page using a frame that is invisible to the user (see column 3, lines 18-21 and column 5, lines 50-59), further providing, outside of the frame, data in a web page that is capable of being updated without refreshing the entire web page (see column 5, lines 50-59 and column 4, lines 14-20), a frame (IO frame, which is invisible) that periodically requests updated data (instructions that guide the update) from a server (see column 3, lines 51-64 and column 5, line 50 through column 6, line 6), and causing the display frame to be updated in accordance with the data received without refreshing the entire webpage (see column 5, lines 50-59, column 1, lines 40-41, and column 4, lines 14-20). Heidingsfeld, however, doesn't teach the at least one updatable object corresponding to an HVAC system. Meyer teaches a system for monitoring data displayed on a web page similar to that of Heidingsfeld (see column 4, lines 19-39), but further teaches the updateable objects corresponding to an HVAC system (see column 4, lines 19-39 and column 3, lines 36-56). It would have been obvious to one of ordinary skill in the art,

Art Unit: 2173

having the teachings of Heidingsfeld and Meyer before him at the time the invention was made to modify web page monitoring system of Heidingsfeld to include HVAC information, as did Meyer. One would have been motivated to make such a combination because effective remote monitoring of HVAC systems can increase efficiency.

9. With regard to claim 2, which teaches the at least one updateable object being an HTML element, Heidingsfeld teaches, in column 3, lines 30-33, the renderings of the data being via HTML.

10. With regard to claims 3 and 17, which teach configuring the frame to request updated data from the server in response to a time reaching a threshold value, Heidingsfeld teaches, in column 3, lines 51-64, requesting updated data when a predetermined amount of time has passed.

11. With regard to claims 4, 10, and 18 which teach the instructions set comprising a Script that is executable by the frame without user interaction, Heidingsfeld teaches, in column 3, line 61 through column 4, line 19, initiating a request for updated data on a periodic basis (no user interaction involved), where the data can be JavaScript.

12. With regard to claims 5, 11, and 19 which teach causing the at least one updateable object to be updated comprising interacting with an external Script running within the web page external to the frame in order to cause the external Script to modify the updateable object without refreshing the web page, Heidingsfeld teaches, in column 4, lines 14-20 and column 5, line 50 through column 6, line 16, using instructions from a

server transmitted to a frame external to the display, to modify the display, where the data can be JavaScript.

13. With regard to claims 7 and 20, which teach the updated data generated by a Java servlet executed by the server, Heidingsfeld teaches, in column 3, lines 7-10 and 27-33 and in column 4, lines 41-45, the transmission of updated JavaScript data between the client and the sever.

14. With regard to claim 8, Heidingsfeld teaches a method for updating data within a web page using a frame that is invisible to the user (see column 3, lines 18-21 and column 5, lines 50-59), further providing, outside of the frame, data in a web page that is capable of being updated without refreshing the entire web page (see column 5, lines 50-59 and column 4, lines 14-20), a frame (IO frame, which is invisible) that periodically requests updated data (instructions that guide the update) from a server (see column 3, lines 51-64 and column 5, line 50 through column 6, line 6), and causing the display frame to be updated in accordance with the data received without refreshing the entire webpage (see column 5, lines 50-59, column 1, lines 40-41, and column 4, lines 14-20). Heidingsfeld, however, doesn't teach the updated data being related to sensor information in an HVAC system. Meyer teaches a system for monitoring data displayed on a web page similar to that of Heidingsfeld (see column 4, lines 19-39), but further teaches the updateable objects corresponding to an HVAC system (see column 4, lines 19-39 and column 3, lines 36-56), and the state of the data coming from sensors on the respective objects (see column 3, lines 22-24). It would have been obvious to one of ordinary skill in the art, having the teachings of Heidingsfeld and Meyer before him at

the time the invention was made to modify web page monitoring system of Heidingsfeld to include HVAC information, as did Meyer. One would have been motivated to make such a combination because effective remote monitoring of HVAC systems can increase efficiency.

15. With regard to claim 9, which teaches the invisible frame comprises an HTML element with a height attribute and a width attribute each set to a value of zero, Heidingsfeld teaches, in column 3, line 18-21 and 31-33, a web browser rendering HTML data in a display frame, the HTML data being sent from an invisible frame (a frame having height and width of zero).

16. With regard to claim 13, which teaches the condition being selected from the group consisting of time, temperature, airflow, and damper position, Heidingsfeld teaches, in column 3, lines 51-64, requesting updated data when a predetermined amount of time has passed, but doesn't teach temperature, airflow, and damper position. Meyer teaches, in column 3, lines 36-56, the HVAC system receiving input from airflow sensors, a thermostat, and a variable damper.

17. With regard to claim 16, Heidingsfeld teaches a method for updating data within a web page using a frame that is invisible to the user (see column 3, lines 18-21 and column 5, lines 50-59), further providing, outside of the frame, data in a web page that is capable of being updated without refreshing the entire web page (see column 5, lines 50-59 and column 4, lines 14-20), a display device and corresponding processing unit (see figure 1), a frame (IO frame, which is invisible) that periodically requests updated data (instructions that guide the update) from a server (see column 3, lines 51-64 and

Art Unit: 2173

column 5, line 50 through column 6, line 6), the data is processed and causes the display frame to be updated in accordance with the data received without refreshing the entire webpage (see column 5, lines 50-59, column 1, lines 40-41, and column 4, lines 14-20). Heidingsfeld, however, doesn't teach the at least one updatable object corresponding to an HVAC system. Meyer teaches a system for monitoring data displayed on a web page similar to that of Heidingsfeld (see column 4, lines 19-39), but further teaches the updateable objects corresponding to an HVAC system (see column 4, lines 19-39 and column 3, lines 36-56). It would have been obvious to one of ordinary skill in the art, having the teachings of Heidingsfeld and Meyer before him at the time the invention was made to modify web page monitoring system of Heidingsfeld to include HVAC information, as did Meyer. One would have been motivated to make such a combination because effective remote monitoring of HVAC systems can increase efficiency.

18. With regard to claim 21, which teaches the frame being an inline frame, Heidingsfeld teaches, in column 5, lines 50-51 and in column 3, lines 31-33, the webpage containing an invisible frame, where the HTML protocol is used (this is similar to the inline frame as defined on pages 2 and 3 of the specification).

Response to Arguments

19. The arguments filed on 10-03-2005 have been fully considered but they are not persuasive. Reasons set forth below.

20. The Declaration was insufficient to overcome the Heidingsfeld reference.


Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis G. Bonshock whose telephone number is (571) 272-4047. The examiner can normally be reached on Monday - Friday, 6:30 a.m. - 4:00 p.m.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571) 272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12-20-05
dgb


**RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173**